

EXHIBIT 1

**EXPERT REPORT OF DR. MICHAEL A. KAMINS IN THE CASE OF
KEITHLY v. INTELIIUS, INC. AND INTELIIUS SALES, LLC**

I. BACKGROUND AND QUALIFICATIONS

1. I am presently Director of Research, Full Professor and Area Head of Marketing with tenure at the Harriman School of Business at Stony Brook University-SUNY. At Stony Brook, I have exclusively taught courses in marketing at the graduate level inclusive of Marketing Research, Marketing Management and Marketing Strategy. In 2008, I was voted “Best Teacher in the Graduate School” by the Stony Brook graduate students. For the Spring of 2011, I am currently teaching Marketing Strategy and Marketing Management at Stony Brook in our full-time M.B.A. program. Prior to my position at Stony Brook, I was an Associate Professor of Marketing, with tenure, at the Marshall School of Business Administration at the University of Southern California where I taught for over 24 years. While at USC, I taught courses at the executive, doctoral, graduate and undergraduate level in strategic marketing management and marketing research. I also taught in USC’s prestigious Global Executive MBA program (GEMBA) in Shanghai, China as well as in the USC Executive MBA program.

2. In 2002, I won a national teaching excellence award sponsored by the *Academy of Marketing Science*. I have also advised numerous companies regarding their advertising, marketing and marketing research practices both in my capacity as Director of the IBEAR (International Business Education and Research) International Business Consulting Project at the University of Southern California, as well as in many other independent consulting assignments.

3. In terms of research, my doctoral dissertation at New York University was focused on consumers’ evaluation of brands as a function of varying advertising techniques and communication strategies. My dissertation was published in the *Journal of Marketing Research*. Throughout my career, I have focused on how consumers interpret advertising and promotional material through the measurement of attitude, cognition, behavioral intention and verbal protocols. I have also conducted over 300 consumer surveys across various products and services in the last 20 years. This academic experience derived through both theoretical

development and applied primary research (*i.e.*, using both surveys and experiments) has enabled me to understand how the typical consumer would react to advertising claims across a wide range of product categories.

One of my current research interests in the academic arena is in the area of branding and in the image which certain characteristics of brands convey. I have published numerous empirically based articles on the “pioneer brand” -- (*i.e.*, the brand which establishes a product class such as Amana, the first brand of microwave oven) -- and I am considered one of the experts in the country in this area. My current research interests also include the study of strategic bidding strategy in an auction environment as well as consumer perceptions of price bundling. My recent publication in the *Journal of Consumer Research* (December, 2009) deals with price bundling and BOGO’s (“buy one get one free”), and my recent paper in the *Strategic Management Journal* focuses on the relative importance of employee and consumer perceptions in the evaluation of a focal company (May, 2010).

4. I received a Bachelors of Business Administration in 1974 from Bernard M. Baruch College in New York, with a major in Statistics. I received my MBA from the same institution in 1977. In 1984 I received my Ph.D. in Marketing from New York University. Since receiving my doctoral degree, I have published over fifty academic articles and proceedings in major academic journals inclusive of the Journal of Marketing, Journal of Marketing Research, Journal of Consumer Research, Strategic Management Journal, Journal of Consumer Psychology, Journal of the Academy of Marketing Science, Journal of Advertising and the Journal of Advertising Research. I have also conducted extensive survey research in both an academic and consulting environment inclusive of surveys on the issue of confusion, secondary meaning and dilution. I have testified in relation to confusion at both the State and Federal court level and have also testified in front of the California Public Utilities Commission (CPUC) regarding issues of false and deceptive advertising and the consumer’s interpretation of that advertising.

Finally, I have consulted for such companies and individuals as Cingular Wireless, Con-Agra, Hilton Hotels, AT&T, Bank One, Canon, LensCrafters, Pinkberry, Panda Express, Sears, The State of California, The State of New York (Eliot Spitzer, AG), Bill Medley (Righteous Brothers), Muhammad Ali, Kareem-Abdul Jabbar and the Doors. I am compensated at the rate of

\$550/hour for consultation, deposition and trial time in this case. My curriculum vitae is attached as Exhibit 1 and a record of all cases in which I have testified at deposition or trial within the past 4 years is attached as Exhibit 2.

5. I reserve the right to consider and/ or rely upon other expert reports that may be filed in this matter and any further testimony of any fact or expert witnesses at a deposition or at trial and to provide my opinion with respect to these facts and testimony. Moreover, I reserve the right to offer rebuttal testimony to any evidence or argument presented by the opposing party in this case. To the extent that any new information is made available to me after submission of this report, I will evaluate that information to determine whether it has any impact on the opinions and conclusions set forth in this report. If necessary, I reserve the right to amend this report to take that information into consideration.

II. MY TASKS IN THIS CASE

6. I have been asked to provide an expert opinion as to whether the marketing and promotional approach taken by Intelius to sell products and services on their website are deceptive and misleading resulting in the consumer's purchase of "bundled" and "post-transactional" services. I have also been asked to provide an opinion as to whether such marketing and promotional approaches utilized by Intelius would lead consumers to purchase products and services they may not be aware that they have purchased. Finally, I have also been asked to opine as to whether Intelius's marketing and promotional approach has been consistent since 2007. My findings and opinion are that Intelius's marketing practices are indeed consistent and in many cases deceptive. Many of these common marketing practices used over time by Intelius serve to mislead and deceive their customer base resulting in "post-transactional" and "bundled" purchases on behalf of the average consumer for items they may not be aware that they have purchased. These deceptive and misleading marketing practices are based upon the inducement of System I (or low involvement) cognitive processing through the use of various promotional cues and tactics placed within the Intelius website. Strategic use of such cues conform with and prey upon known human biases in decision making inclusive of the "optimum bias," "inertia," "serial positioning," "the Zeigarnik effect" and the "Conditioned Response Bias." My opinions set forth in this document are supported by my own navigation of the Intelius

website in January 2011 (see Exhibit 3 attached hereto), my review of documents which reflect the appearance of Intelius's website over time including Exhibits A-F attached to the declaration of Ronald V. Thunen III filed August 16, 2010 (Dkt. No. 72), as well as copies of pop-up advertisements that appeared on Intelius's website between 2007-2010 (Bates range Intelius-K000928-001042, which plaintiffs are filing as an exhibit to their class certification motion). In addition, I have relied upon my knowledge of psychological principles discussed in the theoretical consumer behavior literature that underlie human decision making behavior, that when utilized by a marketer such as Intelius, can motivate (sometimes without awareness) the consumer's purchase of a good in many cases even without their knowledge.

7. In the sections that follow, I will discuss these psychological principles in the context of how Intelius used them to physically construct an internet site which would trigger purchase behavior for items presented to the customer "bundled" or "post-transactional." It is important to note, that such items that consumers have purchased and that are the focus of this action, can and have been characterized as "post-transactional" in that they are purchases made from either a third party vendor or Intelius itself, after the consumer has purchased an initial item offered by Intelius. Offers can be characterized as bundled where discounts are given on the initial purchase if a second purchase is made.

8. These "post-transactional" purchases are distinct from purchases that may be characterized as "impulse purchases." According to Rook (1987), an impulse purchase is a spontaneous and immediate purchase where the consumer is not actively looking for a product and has no prior plans to purchase, but is taken at the moment by a significant need to own the product. Rook (1985) indeed further described impulse buying as an intense, emotional, exciting urge to buy without regard to the consequences of the purchase decision. In the present action, the "post-transactional" purchases at issue, may indeed be immediate and may be spontaneous but this is only because the consumer has been duped by Intelius into pushing the "right buttons" to make the purchase occur. There is typically no exciting urge to buy the "post-transactional" product, there is no emotion, indeed there may not even be awareness of the purchase until the monthly bill arrives at the consumer's home. Even then, if the purchase is not clearly identified (as I am

informed is the case in this action), the consumer may not even know for what he/she is being charged.

9. It is ironic that Intelius's slogan is: "Live in the know," especially since a significant percentage of the company's revenues are derived from stealth sales --purchases which consumers may not be aware that they have made. The slogan of a company often characterizes in a few short words the overall strategy of the company and its brand positioning. As Kotler (2008) notes, "A good slogan captures brand essence, personality, and positioning." For example Hewlett-Packard communicates their innovativeness with the slogan "Invent" while BMW communicates their expertise in manufacturing automobiles by using the slogan: "The Ultimate Driving Machine." Intelius's slogan of "Live in the Know" suggests that they want consumers to be aware of their surroundings and that their purchases will generate such knowledge, yet their marketing strategy seems to be based on techniques that are anchored in deception.

III. THE DECEPTIVE PATH TO INVOLUNTARY PURCHASE

10. As noted above, Intelius uses a number of strategic design elements on its website to funnel the consumer down a path that results in the purchase of additional (and often more costly) items from another vendor (or from Intelius itself), than what he originally visited the web site for. Often these more expensive items are purchased without the consumer's knowledge or confirmed consent. In order to understand how the average consumer can be so easily deceived, "one must understand one of the most fundamental weaknesses of human decision making, involving the tendency to make decisions using automated – and often unconscious—heuristics that respond to only limited aspects of the human environment." (Meyer, 2009). The 2002 Nobel Prize winner in Economic Sciences, Daniel Kahneman (2003) proposed that individuals engage in two different types of cognitive processing: "Intuition" (System I) and "Reasoning" (System II). System I type processing involves rapid and automatic actions or perceptions for which we have very little cognitive control, almost as if we behave on automatic pilot attracted to bright lights and environmental cues as moths are attracted to a flame. System II processing is

more deliberate, slower and subject to conscious judgments and attitudes.

11. In consumer behavior research, System I and System II processing has been well documented (Paivio, 2007), as have other conceptualizations of “dual-processing” models of cognitive processing. The most famous is that of “high” and “low” involvement (Petty, Cacioppo and Schumann 1986). With high involvement, attitude change is derived from the “central route” to persuasion and emanates from the consumer’s diligent consideration of information that he feels is central to the true merits of an attitudinal position. Under the “Peripheral” or low involvement route to attitude change, the attitude issue or object is associated with positive or negative cues in the environment, or because the consumer makes a simple inference about the merits of a position based upon various simple cues in the persuasion context. Intelius’s internet site uses various promotional techniques designed to elicit or generate “low involvement” or System I type processing on behalf of the typical consumer, even influencing fairly sophisticated consumers.

12. Various cues are prevalent on Intelius’s web pages and most of them are designed to move the consumer through a mindless path to purchase additional “post-transactional” or “bundled” items. Such cues include, but are not limited to:

- ✦ the use of colored “high chroma”¹ buttons to push, with the knowledge that high chroma is exciting and attracts attention;
- ✦ the position of the buttons on the page and the size of the font;
- ✦ price incentives and “free” trials;
- ✦ teaser web pages which appear and tell you that your purchase is “about to be

¹ Note that “chroma” relates to the perceived intensity of the color or the degree of pigment in the color (Gorn, Chattopadhyay, Yi and Dahl, 1997).

viewed” even though it is not, inducing System I processing;

✦ repeat offers even though similar offers have previously been declined; and

✦ induced “yes” responses to different questions than one believes he is actually answering (*e.g.*, responding “yes” to a monthly commitment as opposed to the belief that one is responding “yes” to wanting to view one’s credit report or subject address).

13. All of these cues enable the activation of the consumer’s intuitive processing system (System I) at the exclusion of the reasoning processing system (System II), so that the consumer will not scrutinize the text closely enough to realize that he/she is committing to purchasing a long lasting subscription to an offer from Intelius or Adaptive Marketing LLC.

14. A short description of my experience with the Intelius site, in a search for the address and phone number of a long lost friend (Philip Winograd)² will illustrate many of the cues continually used over the period of this action, to entice the consumer to “slip-up” and unwittingly enroll in a subscription or membership program.

15. During my search in January 2011, when I designated the name of the individual I wished to search for (See Exhibit 3 at 1), the website showed progress by leading me to a temporary web page with an animated center dial which turned clockwise, indicating that there was a “search in progress” searching public records for a Philip Winograd in the state of New York. I then arrived on a page that gave me five alternatives with the designated name (See Exhibit 3 at 2). This page is standard and has been used by Intelius during the class period (see Dkt No. 72, Thunen Decl. Exhibit D, Step 1 in a search for Daniel Savage conducted on November 1, 2009). Subsequently, I then clicked on a large orange arrow that had “Get the Report on...” written on it. Upon completing this task, I immediately arrived on a webpage with a large banner that read: “Get the information you need on Philip Winograd” that then listed below three alternative

² This is a pseudonym for the real name of my long lost friend.

search options from left to right, and the information provided by each type of search (See Exhibit 3 at 3). A close approximation to this page can be seen in the Thunen Declaration Exhibit D, step 3 (Dkt. No. 72). These continuous road-signs, directing the consumer to “get the information on...” increase the consumer’s anticipation regarding the fact that by simply going through hoops, one could get closer to one’s goal of attaining the report. In a sense, through this process, the consumer is being programmed to mindlessly push buttons to proceed from screen to screen, similar to the experience one feels as one is led through a maze to the opening at the other end. My examination of Thunen Exhibits A-E, contain an almost identical process of road-signs, whose goal is to raise the consumer’s anticipation that the report is imminent.

16. Below each search type were two buttons with the writing “Add to Cart” in large lettering. The search option on the far left was titled a “People Search Report”, the button immediately below it (Add to Cart”) indicated a price of \$0.95 (51% off); below this button was small print text that stated “Special Price with FREE Identity Protect Trial”. Below this writing was another button stating “Add to Cart” but to the left was a price of \$1.95 (below the price was the notation that this was the “Regular Price”). In addition, the “Special Price” option was outlined in bright orange, while the “Regular Price” option was in lower chroma green. Consistent with this format, the page describing “Step 3” in Exhibit D to the Thunen Declaration is almost identical to this page. An illustration of these choices for the “People Search Report” option (without the color) is presented below in Figure 1:

FIGURE 1

Configuration of “People Search Report” Options

<p>\$0.95</p> <p>51% off</p> <p><u>Special Price with FREE Identity Protect Trial</u></p> <p>\$1.95</p> <p>Regular Price</p>

The other two options were a “24 Hour Pass” offered at \$14.95 (25% off) with the FREE Identity Protect Trial and at \$19.95 at “Regular Price.” Finally, a “Background Report” was offered at

\$39.95 with the FREE Identity Protect Trial and \$49.95 at “Regular Price.” The more expensive button (without the free trial) was always below the button linked to the free trial and was in low chroma green as opposed to high chroma orange. This is consistent with Thunen Exhibit D, Step 3 as described above. (In Exhibit D, high chroma red was utilized on the top button and low chroma/high valence blue was used on the bottom button).³

17. One’s tendency is to click the top button above as opposed to the bottom below for each of the options provided in Exhibit 3 (at 3), for three specific reasons that are all linked to automatic or (System I) processing:

a) The price of the top option is always significantly lower than the bottom option, and the print below it (although underlined) is in small print indicating that this is a “Special Price with FREE Identity Protect Trial.” Quite simply, consumers are attracted to lower price “deals” and better value for their money (Blattberg, 1989).

b) Consumers naturally gravitate to the button higher on the page which is closer to the description of the product due to primacy considerations linked to the “serial positioning” and order effect (Alpert and Kamins 1994; Kardes and Herr 1990).

c) High chroma colors (a bright orange) are more attention getting than a lower chroma/high valence green (Gorn, Chattopadhyay, Yi and Dahl 1997).

18. The next web page one arrives at after clicking the “People Search Report Regular Price offer” is a page titled “Customize People Search Report for Philip Winograd (See Exhibit 3 at 4). This page is similar to the Step 5 page shown in Thunen Exhibit D or E. Exhibit 3 (at 4) lists four options on the left hand side of the page, and provides an order summary on the right hand side. Clicking the “Continue” button brings one to a page that has a large banner headline stating that “You are Almost Done – Get Your Report.” (See Exhibit 3 at 5). It also asks whether you are a new or returning customer. If the former is the case, one is directed to a page to fill out payment information as well as the establishment of an account identity and password. Toward the bottom of the page, one is directed to click on a large bright rectangular orange button that

³ “Valence” is the degree of darkness or lightness in the color relative to a neutral scale and is linked to relaxation, it extends from pure black to pure white (Gorn, Chattopadhyay, Yi and Dahl 1997).

states: “Click here to Complete Order and Get Your Report.” If one is an existing customer, one is directed to “Login & Continue” by pressing a large rectangular orange button at the bottom of the page. You then are directed to a payment summary page titled “Ordering from Intelius is Quick and Easy.” (See Exhibit 3 at 6). Again, one is told to: “Click here to Complete Order and Get Your Report.”

19. Throughout this process, one is led to believe that one’s report is just around the corner, literally at the next click of a button. This creates a degree of anticipation on behalf of the consumer, creating a need for cognitive completion with the receipt of the report. Hence, consumers are anxious to click buttons, any button in fact, that indicate that their order will be completed and their information accessible to their eyes. This state of need for cognitive completion is known as the Zeigarnik effect and was documented by the author back in 1927. Zeigarnik (1927) theorized that an incomplete task or unfinished business creates “psychic tension” within us. This tension acts as a motivator to drive us toward completing the task or finishing the business. In Gestalt terms, we are motivated to seek “closure.” In the context of the present situation, consumers are almost blindly driven from screen to screen in a seemingly unending chase for the completed report. Such a chase sets up repetitive automatic processing (System I), triggering the clicking of numerous buttons in order to arrive at the finish line. As Edelman (2009, p. 2) notes in his report to Congress, “The many steps in an online checkout process leave users unusually vulnerable to unrelated offers that, through their timing, appear to be a necessary part of the checkout sequence.”

20. After clicking the large rectangular box as noted in paragraph 19, the anxiety about receipt of the report is raised as an intermediary screen appears which notes “Generating Report...Please Wait” and a circular dial with animation indicative of the fact that time is passing is revealed. Below this dial is the notation: “You are about to view your report on your screen. Please wait until we generate your report.” However, instead of viewing the report, the customer is led to a page which asks them to: “type in your email address below” and presents two large buttons, one in high chroma Orange, with the writing “Yes and show my report” and a button below in low chroma grey “No show my report” (See Exhibit 3 at 7). This approach is common and

consistently used by Intelius over time (see for example Thunen Exhibit B, steps 8a and 8b and Thunen Exhibit D, steps 8a-8d). Since the customer was led to believe in the prior intermediary screen that the report is imminent, he is extremely tempted to click on the “yes” button. Yet, if he did so, he would have agreed to accept the offer for “People Search Membership” where his credit card would have been charged \$19.95 per month for the right to do 25 searches per month in the categories of “People Search;” “Email Look-up;” “Business People Search;” or “Death Records.” While the People Search details were provided on the right hand side of the page, the “Yes” button in orange (the ONLY item in vivid color) would attract the “average consumer” to push it without attending to the information provided. This is because the consumer is programmed to continually push buttons in an automatic mode, by being constantly teased with the promise of a report and the need to open door after door, and push button after button to view one’s report. Given that the report is “imminent” the consumer will thoughtlessly push the button that states: “Yes and show my report” to make that event happen! That is, the “Yes” will be interpreted by the average consumer as a desire to see the report and not as a commitment to a “post-transactional” purchase from another vendor’s, or even Intelius’s, web-site.

21. It is my opinion that the Orange button described in paragraph 20 above, with the written language **“YES and show my report”** will be easily misinterpreted by consumers into seeing the phrase **“YES show my report,”** since consumers have been driven into automatic cognitive processing, involving cue seeking and a cognitive deficient mode of collecting and processing information. That is, they will interpret the button as meaning, “Yes, I wish to see my report” rather than “Yes, sign me up to your post-transactional deal, and then I want to see my report.” This behavior is reflective of a “Conditioned Response Bias,” in that consumer behavior and perception can be driven more-so by the cues consumers expect to see in the environment than cues that are objectively there (Boulding, Kalra, Staelin and Zeithaml 1993; Meyer, 2009). Hence, they will interpret the button as finally providing the key to opening the door as opposed to an agreement to pay a monthly charge of \$19.95 for another product or service. The only difference between the two phrases above, is the word **“and”** which can hastily be deleted when one is quickly and automatically processing information as programmed by Intelius.

22. Compounding this potential misinterpretation of the writing on the button is that consumers normally would expect a check-out process after a purchase has been made which entails many steps (Edelman, 2009). As Edelman notes: "Users rightly expect that a checkout process will end in a page that prominently reports that the transaction was successful." Here they encounter no such page and hence are of the belief that no additional (or second) transaction has occurred. This is true for the relevant Thunen Exhibits A-E described above.

IV. INTELIOUS'S CONSISTENT STRATEGY OF DECEPTION SINCE 2007

23. Based upon my review of the documents produced by Intelius and submitted to the Court, and my experience on the Intelius website, I have concluded that my experience is typical of the general experience that other consumers would have encountered when they accessed the Intelius website for specific services from the period of 2007 to the present. Although the exact sequence of steps and layout of the Intelius website may have changed over the years, the tactics utilized to induce involuntary "post-transactional" and "bundling" purchases did not.⁴ For example, the offer given to me as explained in paragraph 20, was an offer to enroll in a "People Search Membership," all I had to do was to click the "YES and show my report" button and I would have been enrolled, in an open-ended membership program when all I wanted was my initial purchase of a one-person identity search. As reported above, Thunen Exhibit D (steps 8a-8d) reveals a similar tactic with virtually an identical button. This transaction was by definition, "post-transactional" since payment for my information search of Philip Winograd had already been processed (see Exhibit 3 at 6). This concept of getting the consumer to click on a similar button that states: "Yes and show me my report," (where the "No" option is minimized in font and placement exposure to the consumer) has been used time and again by Intelius over the years. Consider INTELIOUS-K 000928-000973 utilized during the years of 2007-2008. Here, under the guise of a "THANK YOU" reward for the filling out of a supposed "survey" the consumer is given a sum of money (\$10.00) to claim with purchase of a particular program such

⁴ "Post-transactional" and "bundling" strategies are not inherently deceptive nor are they frowned upon in marketing strategy, however they both can be used deceptively which is the case in the present action.

as 24Protect Plus, Privacy Matters Identity, ValueMax, Privacy Matters 123, and Identity Protect. This is similar to my experience on the Intelius website in that a price discount for my initial search was given if I happened to click on the discounted button (See Exhibit 3 at 3 as well as Thunen Exhibit D, step 3 for specific examples). Even if the discount is applied to the initial purchase as opposed to the post-transactional purchase, the commonality remains, and that is the use of a bundling tactic of associating both purchases together under one offer with a promotional incentive.

24. Throughout the class period offer details typically are presented in print so small that an eagle would need contact lenses to read. The standard offer associated with the completion of the "survey" states: "Complete the survey below and the short registration form to claim \$10.00 Cash back as a member of *24Protect Plus* FREE for 7 days (click here for details)." (INTELIUS-K 000928). Once again however, there is a button which states: "YES and show me my report" whereas below this button, again in print smaller than an electron, is the statement "No Thanks, Continue." Such an offer typically occurs when the consumer is extremely anxious to finally see the report after going through numerous screens, some offering the promise that "you are almost done," (Exhibit 3 at 5) or "You are about to view your report on your screen." Hence, as I stated earlier, the use of page placement, small print, color and prior trust (*e.g.*, text stating that this is a "secured page"), motivates the average consumer to click on the "Yes, and show me the report button," thinking that the "yes" relates to this desire to see the report and not an agreement to be duped into buying a post-transactional service. Such tactics, are consistently used (individually or in tandem) throughout the Intelius website over the period of 2007 through the present (see Thunen Exhibits D and E).

25. Using a page format similar to that described in paragraph 24 above, Intelius again bundled the post-transactional and initial purchase through the use of price discounts in the form of a percentage discount for the post-transactional product on one's next order (INTELIUS-K 000985) or cash-back on membership (INTELIUS-K 000986-1037; 0001039-1041; Thunen Exhibit D, step 3). Such a price/discount approach was used in 2009 and 2010 as well as in my experience on the Intelius website.

26. Meyer (2009) argues that a central element of the various schemes involving post-transactional marketing methods is an initial tie-in to a familiar web-site, typically one from which the consumer had just made a volitional purchase (in this case it is Intelius). Meyer (2009), argues that this initial purchase is followed by the promise of a “free” premium

such as a cash gift card or dollars off the previous transaction. These features have two likely psychological effects. First, the tie-in works to insure that the feelings of *positive affect* and trust that the consumer had developed in the course of the initial, volitional, transaction would persist while the consumer was reading and processing the information presented on the new landing page. If consumers believed that the web screen they were viewing was merely a continuation of the same exchange with the initial seller, they would have little reason to “raise their antennas” when viewing this new information – thus making it more likely this new information would be processed using System I (automated, heuristic) thought processes rather than System II (deliberative). The second effect is that when these feelings of trust are accompanied by an offer of a free reward (a positive cue), this new information would be processed not just in a heuristic manner, but also with a *positive bias*.

It is my belief that few, if any consumers on the Intelius website would be able to determine if the post-transactional offer is being made by Intelius themselves or by a third-party, nor would few if any consumers suspect that a third party entity was making an offer. This is extremely important since in my opinion, if consumers were aware that the offer came from a third party and not Intelius, they would be significantly less prone to purchase.

27. The consumer is also caught off-guard by the Intelius website in that when purchasing or paying for items on the web, one is typically asked for a credit card number and often has to go through many different screens or complete many different tasks before payment can be tendered. For example, when paying through a more transparent website such as PAYPAL, the process involves many screens and security devices before payment to another vendor can be made. The Intelius website is rather unique in that once your credit card information is given for your initial purchase, it need not be given again. That is, when the returning consumer “Logs in” to the site, the credit card information is on record, as it is for first time usage, and hence pushing the button “YES and show my report” results in an automatic charge for the post-transactional purchase without the need to re-enter credit card information. This again serves to confuse the

consumer in terms of believing that no other purchase has been made, when indeed it has! As Edelman (2009, p. 3) puts it:

Clicking an ad on a newspaper's website does not give the advertiser the user's credit card number, even if the user is a paying subscriber of the newspaper. But, remarkably, clicking a similar post-transaction offer can indeed transfer a credit card number – eliminating a key warning that would otherwise alert consumers to the impending financial obligation.

28. The Intelius website is also structured so that the default option is the purchase of the post-transactional product. That is, the button to push, that has the word “YES” on it, is often colored in high chroma orange (or red), and placed above the other options (which are often in smaller and less legible print and in high valence). To indicate a choice of non-purchase, one would have to choose an option that seems hidden away and trivialized relative to the “Yes” option on the website. This promotional approach has been termed in the field as “negative-option” pricing or billing and is at odds with the more traditional approach to marketing where the default option is no purchase. As such it places the cost of purchase on the shoulders of the consumer, and if the consumer is not made aware of their purchase (as is the case in the present action), such an approach can be characterized as deceptive and misleading.

29. It is also interesting to note that those who were cognitively aware and enticed by a “FREE” 7-day trial of another vendor's product could have reasonably selected the trial because they wanted to “test-drive” the product without any strings attached (See for example INTELIOUS 0000974, 000977-81). However, the fine print indicates that after the 7-day period ends: “The membership fee of \$19.95 per month will be charged/debited by Intelius.com to the credit/debit card you used today with intelius.com after the 7-day trial and then automatically charged/debited each month at the then current monthly membership fee so long as you remain a member.” (See Exhibit 3 at 7). Hence the onus is again placed on the consumer to cancel the purchase of the product and therefore even a FREE trial is an entrapment into a larger commitment. This approach can again be characterized as a negative-option pricing scheme and the consumer who initiated the trial so as to have no strings attached is instead entrapped into a long-term commitment.

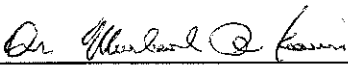
30. Negative-option pricing or billing by its nature takes advantage of a well-known bias in consumer decision-making known as “inertia” or the preference for status-quo courses of action given uncertainty (Kahneman, Knetsch and Thaler, 1991). Inertia represents the idea that it is easier for people to take no action than to take action. The same effect is present here for some consumers. Compounding this effect of inertia is that in some cases I am informed that the third party vendor does not bill the consumer’s credit card for their “post-transaction” marketing sale in its name, rather it uses the Intelius name. Hence, the consumer when taking a quick glance at his credit card sees a familiar charge rather than a charge from an unknown vendor that would make him question the source and cancel the subscription.

V. CONCLUSION

It is my conclusion that the Intelius website is designed to motivate and confuse the consumer into the purchase of “post-transactional” and “bundled” services and products, which many consumers may not be aware they have purchased even after purchasing. These deceptive and misleading marketing practices are based upon the inducement of System I (or low involvement) cognitive processing through the use of various promotional cues and tactics placed within the Intelius website. Strategic use of such cues conform with and prey upon known human biases in decision making inclusive of the “optimum bias,” “inertia,” “serial positioning,” “the Zeigarnik effect” and the “Conditioned Response Bias.” In order to induce “post-transactional” purchases that consumers may not need or want as well as System I processing, Intelius uses cues and tactics such as but not limited to: a) high chroma “color” designed to attract attention to buttons that when pushed entrap the consumer into purchasing a product or service (as opposed to low chroma/high valence buttons for the option Intelius would rather you did not choose); b) placement of

information that pre-disposes the consumer to make particular choices on the website and push specific buttons; c) placement of text and temporary web pages designed to increase anticipation that the desired “report” will finally appear; d) repeat offers after they have been initially declined; e) hidden information that leads consumers to believe that the subsequent offer comes from the same seller when it may not; f) confusing text that induces the consumer to believe that the term “Yes” means a desire to receive one’s report when it is actually a commitment to a membership service or product; and g) reduced price incentives and tactics such as “free-trials” to enhance selection of the long term membership option.

The “average” consumer has little defense against such tactics and will fall prey to “post-transactional” purchases and “bundling” tactics, buying products and services that he may not need or want, or even know he has purchased.



Dr. Michael A. Kamins



April 22nd 2011

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- Rook, Dennis (1987), "The Buying Impulse," *Journal of Consumer Research*, 14(2), 189-199.
- Zeigarnik, Bluma (1927), "On Finished and Unfinished Tasks," *Psychologische Forschung*, Vol. 9, pp. 1-15.

EXHIBIT 1

CURRICULUM VITAE

Michael A. Kamins

Professor of Marketing-Area Head	5 OldField Road
Stony Brook University-SUNY	East Setauket, New York 11733
Stony Brook, New York 11794	(323) 868-9507
(631) 632-9095	email: michael.kamins@stonybrook.edu

EDUCATION:

Graduate:	Ph.D., New York University; February 1984 Major: Marketing Minor: Quantitative Methods
Dissertation:	“The Impact of Involvement, Advertising Type, and Expectation Level on Product Evaluation” Chairman: Henry Assael
	M.B.A., Bernard M. Baruch College; June 1977 Major: Statistics
Thesis:	“Multiple Comparison Procedures” Chairman: Mark Berenson
Undergraduate:	B.B.A., Bernard M. Baruch College; January 1974 Major: Statistics

TEACHING EXPERIENCE

Stony Brook University (SUNY): Associate Dean of Research- September 2010-Present.
Stony Brook University (SUNY): Full Professor of Marketing and Area
Head: December 2007-Present. Courses Taught: Graduate Level Marketing
Management, Marketing Strategy and Marketing Research. Undergraduate Level:
Honors program on Leadership in the area of Data Analysis.

University of Southern California: Associate Professor of Marketing 9/90-12/07. Assistant Professor of Marketing 1/84- 9/90. Acting Chairperson of Marketing – Spring 1994. Courses taught at Undergraduate Level: Marketing Management, Marketing Research; at Graduate Level: Marketing Management (IBEAR and CORE); Marketing Research, Ph.D. Seminar in Research Design; CORE Research Methods and Design; IBEAR Consulting Projects; Executive MBA Program (Theme 3 – Marketing). Global Executive MBA (GEMBA). Shanghai, China, 2005-6.

Visiting Professor of Marketing, Stony Brook University, Stony Brook New York, Fall 2006.

Visiting Professor of Marketing, Griffiths University-Brisbane Australia Fall 2003.

New York University: Instructor in Marketing 9/80 – 1/84. Courses taught include Marketing Management, Marketing Research (Graduate and Undergraduate).

Bernard M. Baruch College: Adjunct Lecturer in Statistics 6/77 – 7/80. Courses taught, Statistics for both Accounting and non-Accounting majors.

PUBLICATIONS IN JOURNALS:

“Reputation Gaps and the Performance of Service Organizations,” 2010 Strategic Management Journal, Vol. 31(5), pp. 530-546, with Gary Davies and Rosa Chun.

“An Application of Terror-management Theory in the Design of Social and Health-Related Anti-Smoking Appeals,” 2010. Journal of Consumer Behavior, V. 9(3), 172-190 with Ingrid Martin.

“Promotional Bundles and Consumers’ Price Judgments: When the Best Things in Life Aren’t Free,” 2009. Journal of Consumer Research, Vol. 36 (December), with Valerie S. Folkes and Alexander Fedorikhin, pp.660-670.

PUBLICATIONS IN JOURNALS: (continued)

"Rumor Has It: The Moderating Effect of Identification on Rumor Impact and the Effectiveness of Rumor-Refutation" 2008, Journal of Applied Social Psychology," with Sabine Einwiller. Vol. 38(September), pp. 2248-72.

"How Do Customers Know Which Brand is the Market Leader or Market Pioneer?: Customers Inferential Processes, Confidence and Accuracy," 2007 Journal of Marketing Management, Vol 23 (September), pp. 590-611. with Frank H. Alpert and Lars Perner (**Lead article**).

"Enough is Enough! When Identification no Longer Prevents Negative Corporate Associations" 2006, Journal of the Academy of Marketing Science, Vol. 34(2), with Sabine Einwiller, Alexander Fedorikhin and Allison Johnson, pp. 185-194.

"Corporate Claims as Innovator or Market Leader: Impact on Overall Attitude and Quality Perceptions, and Transfer to Company Brands," 2004 Corporate Reputation Review 7(2), with Frank H. Alpert, pp. 147-159.

"Doctoral Coursework for Australasia" 2004 with Frank H. Alpert. Invited Commentary for the Australasian Journal of Marketing, Vol. 12 (1), pp. 66-72.

"Effects of Seller-Supplied Prices on Buyers' Product Evaluations: Reference Prices in an Internet Auction Context," 2004, with Valerie Folkes and Xavier Dreze. Forthcoming, Journal of Consumer Research, 30(March) pp. 622-628.

"Consumers' Perception and Misperception of Market Leadership and Market Pioneership," 2003, with Frank H. Alpert and Lars Perner. Journal of Marketing Management, Vol. 19 (August), pp. 807-834.

"Retail Buyer Beliefs, Attitude and Behavior Toward Pioneer and Me-too Follower Brands: A Comparative Study of Japan and the United States 2001 International Marketing Review 18(2) with Frank H. Alpert Tomoaki Sakano and Naoto Onzo, pp. 160-187.

PUBLICATIONS IN JOURNALS: (continued)

“Retail Buyer Beliefs, Attitude and Behavior Toward Pioneer and Me-too Follower Brands: A Comparative Study of Japan and the United States 2001 International Marketing Review 18(2) with Frank H. Alpert Tomoaki Sakano and Naoto Onzo, pp. 160-187.

“Impact of Trial, Product Information and Pioneership Awareness on the Evaluation of the Pioneer Brand,” 2000 Journal of Consumer Psychology, Vol. 9 (4) with Frank H. Alpert and Michael Elliott, pp. 223-230.

“Effect of Information About Firms’ Ethical and Unethical Actions on Consumers’ Attitudes,” 1999 Journal of Consumer Psychology, Vol. 8 (3) with Valerie S. Folkes, pp. 243-259.

“Consumer Responses To Rumors: Good News, Bad News,” 1997 Journal of Consumer Psychology, Vol. 6 (2) with Valerie S. Folkes and Lars Perner, pp. 165-187.

“A Multimethod Examination of Buyer-Seller Interactions Among Japanese and American Business-people,” 1997, Journal of International Marketing, with John L. Graham and Wes Johnston.

“Retail Buyer Decision Making in Japan: What U.S. Sellers Need to Know,” 1997, International Business Review, Vol. 6 (2) with John L. Graham, Naoto Onzo and Tomoaki Sakano, pp. 91-112.

“U.S. Suppliers in Japan: Overcoming Obstacles to Trade,” 1996, Harvard Business Review, (Editors Brief), with Frank Alpert, John L. Graham, Naoto Onzo and Tomoaki Sakano, pp. 14-15.

“Pioneer Brand Advantage in Japan and the United States,” 1996, Marketing Science Institute Working Paper. Report No. 96-101, (March) with Frank Alpert, John Graham, Tomoaki Sakano, and Naoto Onzo.

“Retail Buyer Decision Making in Japan: What U.S. Sellers Need to Know,” 1995 Marketing Science Institute Working Paper. Report No. 95-108, August with Frank Alpert, Tomoaki Sakano, Naoto Onzo and John Graham.

PUBLICATIONS IN JOURNALS: (continued)

“An Empirical Investigation of Consumer Memory, Attitude, and Perceptions Toward Pioneer and Follower Brands, 1995, Journal of Marketing, Vol. 59 (October), pp. 35 – 46, with Frank Alpert.

“The Challenge of Obtaining Distribution for Me-Too Follower Brands,” 1995, International Review of Retail, Distribution and Consumer Research, Vol. 5 (April), pp. 203-217, with Frank Alpert.

“Perceptions of Products Made in Japan Versus Made in the U.S. Among Japanese and U.S. Executives: A Longitudinal Perspective,” 1995, Asia Pacific Journal of Management, Vol. 12 (1), pp. 49-68 with Akira Nagashima.

“Congruence Between Spokesperson Image and Product Type: A ‘Match-Up’ Hypothesis Perspective,” 1994, Psychology and Marketing, Vol. 11 (6), pp. 569 –588 with Kamal Gupta.

“Consumer Behavior and Pioneer Brand Advantage: Conceptual Framework and Propositional Inventory,” with Frank Alpert, 1994, Journal of the Academy of Marketing Science, Vol. 22 (Summer), pp. 244-253.

“Content Analysis of German and Japanese Advertising in Print Media for Indonesia, Spain and the United States,” with John L. Graham and Djoko Oetomo, 1993, Journal of Advertising, Vol. 22 (2), pp. 5-15 (**lead article**).

“An Examination of Reseller Buyer Attitudes Toward Order of Brand Entry,” 1992, Journal of Marketing, Vol. 56 (July), pp. 25-37, with Frank H. Alpert and John L. Graham.

“Television Commercial Evaluation in the Context of Program Induced Mood: Congruency Versus Consistency Effects,” 1991, Journal of Advertising, Vol. 20 (2), pp. 1-14, with Lawrence J. Marks and Deborah Skinner (**lead article**).

“The Perception of Kosher as a Third Party Certification Claim in Advertising for Familiar and Unfamiliar Brands,” 1991, Journal of the Academy of Marketing Science, Vol. 19 (3), pp. 177-85 with Lawrence J. Marks.

PUBLICATIONS IN JOURNALS: (continued)

“An Investigation into the ‘Match-up’ Hypothesis in Celebrity Advertising: When Beauty May Be Only Skin Deep,” 1990, Journal of Advertising, Vol. 19 (1), pp. 4-13 (**lead article**).

“A Cognitive Response Involvement Model of the Process of Product Evaluation Through Advertising Exposure and Trial,” 1990, Journal of Business Research, Vol. 20 (May), pp. 191-215, with Henry Assael and John Graham (**lead article**).

“Effects of Appeal Type and Involvement on Product Disconfirmation: A Cognitive Response Approach Through Product Trial,” 1989, Journal of the Academy of Marketing Science, Vol. 17 (Summer), pp. 197-207, with Henry Assael (**lead article**).

“The Enhancement of Response Rates to a Mail Survey Through a Labeled Probe Foot in the Door Approach,” 1989, Journal of the Marketing Research Society, Vol. 31 (April), pp. 273-84.

“Two-Sided Versus One-Sided Celebrity Advertising: The Impact on Advertising Effectiveness and Credibility,” 1989, Journal of Advertising, Vol. 18 (2), pp. 4-10, with Meribeth J. Brand, Stuart A. Hoeke, and John C. Moe (**lead article**).

“Celebrity and Non-Celebrity Advertising in a Two-Sided Context,” 1989, Journal of Advertising Research, Vol. 29 (June/July), pp. 34-42.

“An Investigation into the Use of Product Sampling and Advertising: The Effect of Sequence of Exposure and Degree of Advertising Claim Exaggeration on Consumers’ Belief Strength, Belief Confidence and Attitudes,” 1988, Journal of Marketing Research, Vol. 25 (August), with Lawrence J. Marks, pp. 266-81.

“An Examination into the Effectiveness of Two-sided Comparative Price Appeals,” 1988, Journal of the Academy of Marketing Science, Vol. 16 (Summer), with Larry J. Marks, pp. 74-81.

“Two-sided versus One-sided Appeals: A Cognitive Perspective on the Effect of Trial upon Belief Change,” 1987, Journal of Marketing Research, Vol. 24 (February), with Henry Assael, pp. 29-39.

PUBLICATIONS IN JOURNALS: (continued)

“Moderating Disconfirmation of Expectations Through the Use of Two-sided Appeals: A Longitudinal Approach,” 1987, Journal of Economic Psychology, Vol. 8 (June), with Henry Assael, pp. 237-53.

“Cognitive and Affective Dimensions of Educational Objectives: Scale Development and Measurement,” 1987, Journal of Marketing Education, Vol. 9 (Fall), with Dennis Sandler, pp. 52-7.

“Advertising Puffery: The Impact of Using Two-sided Claims on Product Attitude and Purchase,” 1987, Journal of Advertising, Vol. 16 (December), with Larry J. Marks, pp. 6-15 (**lead article**).

PUBLICATIONS IN REFEREED CONFERENCE PROCEEDINGS

“Whether you Win or Whether You Lose: The Differential Risk of Priming the Cognitive and Affective Systems in On-line Auctions,” with Yael Steinhart, David Mazursky and Avi Noy. Association for Consumer Research, Jacksonville, Florida.

“Fantasies Come true and Soon: Mental Construal as a Function of Regulatory State and Time Horizon,” (2009) Association for Consumer Research Proceedings, with Yael Steinhart and David Mazursky. Pittsburgh, Pennsylvania.

“Promotional Bundles and Consumers’ Price Judgments: When the Best Things In Life Aren’t Free,” (2009) Association for Consumer Research Proceedings, with Alexander Fedorikhin and Valerie Folkes. Pittsburgh, Pennsylvania.

“The Interpersonal determinants of Sniping in internet Auctions,” (2008). Association for Consumer Research Proceedings, with David Mazursky, Avi Noy and Yael Steinhart. San Francisco, California.

“When the Loss of Free-Will Can Be Costly: A Novel Approach to an Anti-Smoking Campaign,” (2007). Association for Consumer Research Proceedings, with Aditi Grover. Memphis, Tennessee.

“Relationships Can Disappear in a Puff of Smoke: A Test of Terror Management Theory and Risk perceptions on Smoking Behavior,” (2006). Association for Consumer Research Proceedings, with Ingrid Martin. Orlando, Florida.

PUBLICATIONS IN REFEREED CONFERENCE PROCEEDINGS

“Pioneer Brand Advantage with retail Buyers in Japan, A Comparison with U.S. Data.” (2000), 29th European Marketing Academy Conference Proceedings

(Amsterdam, Erasmus university) with John L. Graham, Frank H. Alpert, Tomoaki Sakano and Naoto Onzo.

“Content Analysis of German and Japanese Advertising (1993) Proceedings of the Fourth Symposium on Cross Cultural Research, 171-175. Kahuku, Hawaii: Gerald Aldaum, Editor.

“Message and Non-message Elements in Advertising: Does Involvement Matter?” (1988), Academy of Marketing Science Proceedings with Dennis Sandler and Henry Assael.

“Investigating the Experiential Dimensions of Product Evaluations” (1987), Advances in Consumer Research, Vol. 14. Association for Consumer Research with Larry J. Marks and Susan Higgins, pp. 114-121.

“The Effect of Framing and Advertising Sequencing on Attitude Consistency and Behavioral Intentions” (1986), Advances in Consumer Research, Association for Consumer Research with Larry J. Marks, pp. 168-72.

“The Effects of Level of Expertise on the Processing of Framed and Unframed Pictorial Print Advertisements” (1986) AMA Educators’ Proceedings, Terence A. Shimp, Subhash Sharma, et al. (eds.) with Larry J. Marks and Donna Murphy, pp. 57-61.

“The Effect of Cognitions Upon Post-trial Evaluation and Purchase Intention Measures and the Advertiser’s Choice of Appeal Type” (1986), with Henry Assael, Researches on Communication Promotion, Aix-en-Provence, France, pp. 275-301.

“The Effect of Commitment and Product Performance Disconfirmation on Consumer Evaluations” (1985) with John W. Keon, AMA Educators Proceedings, pp. 86-92.

“The Effect of Two-sided Appeals upon Post-trial Performance Evaluation, Advertiser Credibility, and the Disconfirmation Level” (1985), Researches on Communication/Promotion, Aix-en-Provence, France, pp. 86-108.

“What Are the Causes and How Can One Control for Television Advertising Wearout?” (1981), ORSA/TIMS Market Measurement Conference, pp. 67-77.

BOOKS AND CHAPTERS

“Price Bundling” (2010) A Chapter in the Wiley International Encyclopedia of Marketing, Mickey Belch (Editor).

“Marketing Communications” (2002) A Chapter in the Handbook of Marketing, Barton Weitz, Editor, with David W. Stewart (Lead author).

Sales & Marketing: 25 Keys to Selling Your Products. (1999) The New York Times Pocket MBA Series, Volume (8). Lebharr-Friedman Books, New York, New York.
Secondary Research: Information Sources and Methods (second edition) with David W. Stewart (lead author), Sage Publications: New York 1993.

BOOK REVIEWS

“A Brand New Language,” Journal of Marketing, 1994, 58 (April), pp. 129-130 with Nancy Frost.

CONFERENCES ORGANIZED AND HOSTED

**Co-Chair American Marketing Association Summer Educator’s Conference-
Chicago Illinois, August 2009.**

Eighth Annual International Conference of the Corporate Identity/Associations Research Group CI/ARG. Harriman School of Business, Stony Brook University. 2009.

Third Annual International Conference of the Corporate Identity/Associations Research Group CI/ARG. University of Southern California. 2004.

AMA Conference on Marketing and Public Policy and Risk Workshop, Long Beach California and the University of Southern California. 2006.

MANUSCRIPTS IN REVIEW:

“Bidders Beliefs and the Interpersonal determinant of Sniping Behavior in Internet Auctions: Survey Simulation and Field Evidence,” Under third review: Marketing Letters. With Avi Noy, David Mazursky and Yael Steinhart.

“Are Snipers Shooting Themselves in the Foot: A Study of Internet Auctions,” with Valerie Folkes, and Xavier Dreze. Under first review, Journal of Consumer Psychology.

“The Construct of Reverse Confusion in trademark Law: Conceptualization and Methodological Consideration,” Under first review: The Trademark Reporter.

“Smoking Can’t Hurt Me!!” and Other Death-Related Thoughts: A Test of Terror Management, Self-Affirmation and Risk Perceptions’ with Ingrid Martin (Lead author) and Aditi Grover. Under Review: Journal of Marketing.

“Can Sniping in Internet Auctions be an Equilibrium Strategy?” with Valerie Folkes, Atanu Sinha and Xavier Dreze.

WORKS IN PROGRESS:

“The Dual Effect of Signaling on Regret in On-Line Auctions: When the Loser is the Winner and the Winner is the Loser,” with Avi Noy, David Mazursky and Yael Steinhart. Target: Journal of Consumer Research.

“What Counts: Getting There or How We Got There: Mental Construal as a Function of Regulatory State and Time Horizon,” with David Mazursky, Yael Steinhart and Avi Noy. Target: Journal of Consumer Research.

“Complimentary Relationships between Brand and Human Personality,” With Susan Whelan and Gary Davies: Target: Journal of Consumer Psychology.

“When The Consumer Sees Red, Sales Can Be Blue: The Match-Up Between Product Image and Color In Advertising,” with Lars Perner. In preparation for submission (write-up stage): Target: Journal of Consumer Research.

“The Impact of the Bundling of Bundles on Final Sale Price in On-line Auctions: When Bundling Makes Sense,” with Alexander Fedorikhin and Valerie S. Folkes. In preparation for submission (write-up stage) Target: Journal of Marketing.

“Understanding and Regulating Contrast and Assimilation Effects in the Relationship Between Corporate Associations and Consumer Product Responses,” in pretest stage. With Peter Dacin and Tom Brown. Target: Journal of Marketing.

SELECTED PRESENTATIONS:

“Whether You Win or Whether You Lose: The Differential Effect of Priming the Deliberative and Affective Systems in On-Line Auctions,” (2010) Society for Consumer Psychology Annual Conference, St. Petersburg, Florida with Avi Noy, David Mazursky and Yael Steinhart.

“The Dual Effect of “Signaling” on Regret in Online Auctions,” (2010) Society for Consumer Psychology Annual Conference, St. Petersburg, Florida with Avi Noy, David Mazursky and Yael Steinhart.

“Self-Affirmation and Smoking Self-esteem in Social Death Anti-Smoking Advertisements,” (2010) AMA Winter Educators’ Conference, New Orleans, Louisiana with Adidi Grover and Ingrid Martin.

“Enough is Enough! When Identification no Longer Mitigates the Detrimental Effects of Negative Information” (2005) invited presentation at the Academy of Marketing Science Conference, Tampa Florida.

“When the Internet Gavel Falls: A Field Study Replication of the Effects of Uncertainty on Auction Bids,” (2002) at Griffith University, Brisbane Australia.

“Teaching about Teaching,” (2002) at the Academy of Marketing Science Annual Conference, Fort Myers, Florida.

“Product Evaluation As A Function of The Company As An Innovator And/Or Market Leader,” (2002) at the first annual conference on Corporate Associations, Oklahoma State University, Stillwater, Oklahoma.

SELECTED PRESENTATIONS:

“Content Analysis of German and Japanese Advertising” (1993) at the Fourth Symposium of Cross-Cultural Research, Kahuku, Hawaii.

“Context-Induced Mood Effects in Advertising,” Association for Consumer Research, Twenty-first Annual Conference, (1990) New York, New York (with Tina Kiesler and Henni Sanft).

“Investigating the Experiential Dimensions of Product Evaluations,” Association for Consumer Research, Eighteenth Annual Conference, October 8th – 11th, 1987, Boston, Massachusetts (with Larry J. Marks and Susan Higgins).

“Sidedness in a Pricing Context: The Effectiveness of Two-Sided Price Appeals,” Marketing Science Conference, Paris, France, June 25, 1987.

“An Investigation Into the Use of Product Sampling and Advertising: The Effect of Sequence of Exposure and Degree of Advertising Claim Exaggeration on Consumers’ Attitudes,” Joint USC-UCLA Seminar, May 29, 1987.

“The Effect of Framing and Advertising Sequencing on Attitude Consistency and Behavioral Intentions,” Association for Consumer Research, Seventeenth Annual Conference, October 16-18th, 1986, Toronto, Ontario, Canada (with Larry J. Marks).

“The Effects of Level of Expertise on the Processing of Framed and Unframed Pictorial Print Advertisements,” American Marketing Association Summer Educators Conference, August 3-6th, 1986, Chicago, Illinois (with Larry J. Marks).

“The Attainment of Cognitive and Affective Educational Objectives,” at the American Marketing Association’s Global Marketing in the Next Decade” Conference, Singapore, June 16-18th, 1986 (with Dennis Sandler).

“The Effect of Commitment and Product Performance Disconfirmation on Consumer Evaluations,” American Marketing Association Summer Educators Conference, August 11-14, 1985, Washington, D.C. (with John W. Keon).

SELECTED PRESENTATIONS (CONTINUED):

“The Effect of Two-Sided Appeals upon Post-Trial Performance Evaluation, Advertiser Credibility and the Disconfirmation Level,” at Conference Sur La Communication/Promotion, Aix-En-Provence, France, May 29-31, 1985.

“What Are the Causes and How Can One Control for Television Advertising Wearout?” ORSA/TIMS Market Measurement Conference, March 13-15, 1981, New York University.

“One-Way Design Multiple Comparison Techniques with Confidence Interval Applications,” Presented at the American Society of Quality Control Annual Meeting, August 10, 1977, Middlesex, New Jersey.

INVOLVEMENT IN PROFESSIONAL PROGRAMS AND SERVICE ACTIVITIES:

Co-Chair of the 2009 AMA Summer Educators Conference-Chicago.

Program Organizer and co-chair of the 7th Annual Conference on Corporate Reputation held at Stony Brook University in May of 2009.

Program Organizer and co-chair of the 3rd Annual Conference on Corporate Reputation held at the University of Southern California in April of 2004.

Co-Chair of the Public Policy & Marketing Conference 2005. Long Beach California.

Session Chairperson for the 2001 Winter AMA Conference.

Consumer Behavior Track Co-chair for the 1998 AMA Summer Educators’ Conference.

Department of Marketing Acting Chairperson, Spring 1994.

**INVOLVEMENT IN PROFESSIONAL PROGRAMS AND SERVICE
ACTIVITIES:**

Editorial Review Board Member – Journal of Advertising, 1993 – present.

Reviewer, Journal of Advertising, Journal of the Academy of Marketing
Science (1991).

Co-chair and discussant for 1990 Association for Consumer Research conference
special session titled “Segmentation in Consumer and Market Research:
Applications, Current Issues and Trends.”

Member of the 1990 Association for Consumer Research Program Committee-
Conference Site: New York City.

Editorial Review Board Member. Appointed 1989 to the Consumer Behavior
Track, Journal of Business Research.

Session Chairperson, ORSA/TIMS Marketing Science Conference, Durham,
North Carolina, March 17, 1989.

Session Chairperson, ORSA/TIMS Marketing Science Conference, Seattle,
Washington, March 23, 1988.

Reviewer, Journal of Marketing Research, on an Ad Hoc Basis (1987 – present).

Session Chairperson, American Marketing Association’s “Global Marketing in
the Next Decade” Conference, Singapore, June 16-18, 1986.

Session Chairperson, ORSA/TIMS Marketing Science Conference, Dallas, Texas, March 16, 1986.

Reviewer, American Marketing Association Annual Conference, 1988 – present.

Reviewer, Association for Consumer Research Annual Conference, 1985, 1989.

SELECTED CONSULTING ASSIGNMENTS:

MetroPCS	(2009)
Emac	(2007)
Pinkberry	(2006)
American Express	(2005)
Lexus	(2005)
Michael Medavoy	(2004)
New York Attorney General	(2004)
Cingular Wireless	(2003)
Banc One	(2002)
Bill Medley	(2001)
Dole Pineapple	(2001)
Muhammad Ali	(2000)
Banc One	(2000)
Sharp Electronics	(2000)
Billy Blanks & Tae-Bo	(1999)
Weider Nutrition	(1999)
Tri-Star	(1997)
MGM	(1997)

Canon U.S.A.	(1996)
AT&T Capital Leasing	(1995)
Breath Assure	(1995)
Thompson's Minwax Co.	(1995)
Barpassers	(1994)
Kareem-Abdul Jabbar	(1993)

PROFESSIONAL ORGANIZATIONS:

Academy of Marketing Science
American Marketing Association
Association for Consumer Research

HONORS AND AWARDS:

**Awarded the "Best Professor in the Business School" by Graduate students
June 2008- Harriman School of Business, Stony Brook University SUNY.**

**Awarded the Academy of Marketing Science "Outstanding Marketing Teacher
Award" (2002).**

Awarded Summer Faculty Research Fund Grant 1990-2005.

Awarded CIBEAR Grant 1996.

**Awarded the 1989 Dean's Scholarship, School of Business, University of
Southern California.**

Awarded the 1988 May Company Scholarship.

**Winner of the 1987-1988 Golden Apple Award for Excellence in Teaching.
Graduate School of Business Administration, University of Southern California.**

HONORS AND AWARDS:

Nominated to: Who's Who in California; Who's Who in the West; Who's Who in Advertising; and Who's Who Among Emerging Leaders in America.

Summer Research Grant Support Awarded for the Summer of 1986, 1987 and 1988. The University of Southern California.

Voted by the New York University student body as one of the five outstanding professors at the School of Business and Public Administration. 1982,1983.

Nominated for membership in the American Marketing Association's National Honor Society (Alpha Mu Alpha), April 1982.

Represented New York University at the American Marketing Association Doctoral Consortium in Madison, Wisconsin, August 1979.

Graduated Magna Cum Laude – Bernard M. Baruch College, 1974.

Elected as a member of the Business Honor Society –Beta Gamma Sigma, 1974.

Awarded the Morton Wollman Medal for Excellence in the Study of Statistics at Baruch College, 1974.

Awarded the Jack Schlosser Memorial Scholarship at Baruch, 1974.

Awarded an Assistantship for the United States Department of Agriculture, Fall 1974, Iowa State University.

MAJOR UNIVERSITY AND COLLEGE COMMITTEES:

Member, University Wide Health Committee-USC
Deans' Advisory Board Member
Design Team (re-design of the MBA Second Year)
Teaching/Design Team (re-design of the MBA Core)
Faculty Senator, University Wide
Member, Athletic Tickets Committee, University Wide, USC
Member, CORE Redesign Committee, School of Business Administration
Member, Master's Curriculum Committee, Marketing Department
Organizer, Research Fair 1987/1988 for Marketing Department

DISSERTATION COMMITTEE MEMBERSHIP

Aditi Grover (Chair)	
Mathew Lancellotti	Matt Thomson
Joseph Johnson	Frank Alpert
Yun-Oh Whang	Nick Anderson
David Ackerman	Kamal Gupta
Lars Perner (Chair)	Ingrid Martin

EXHIBIT 2

**DR. MICHAEL A. KAMINS-PRIOR EXPERIENCE IN TRIAL AND
DEPOSITION**

CASE	DEPOSITION	TRIAL
American Professional Testing Service V. Harcourt Brace Legal & Professional Publications, Inc. (Phillip Heller-Fenigstein & Kauffman Marc Golden-Reilly & Reiner)	Yes (3/94)	YES (6/94)
Thompson Minwax V. Life-Guard Waterproofing (Susan Lerner-Haight Brown & Bonesteel)	Yes (4/95)	NO
Arthur Maetzold V. AT&T Capital Leasing Services (Jim Mittermiller-Sheppard, Mullin, Richter & Hampton Russ Fukano-Troy & Gould)	Yes (4/96)	NO
Canon Computer Systems, Inc., Canon U.S.A. and Canon Inc. V. Nukote International (Pat Razzano-Fitzpatrick, Cella, Harper & Scinto)	Yes (9/96)	No
Kareem Abdul-Jabbar V. General Motors Corporation and Leo Burnett Company, Inc. (David Rosman)	Yes (10/96)	NO
Gary P. Lask V. Coherent Corporation (Steve Shapiro-Mitchell, Silverberg & Knupp)	Yes (2/97)	NO
William Maitslander V. Breath Asure (Les Werlin-Friedlander & Werlin) No	Yes (1/99)	NO
Sugar Ray Leonard V. Universal Management Services (Lucia Coyoca-Mitchell Silverberg & Knupp)	Yes (10/99)	No
HealthSmart V. Herbsmart (Patty Thayer-Heller Ehrman)	Yes (5/00)	No
California State University V. Bello's Sporting Goods (San Luis Obispo) Neil Tardiff-Smith Tardiff & Hayes	Yes (1/01)	Yes (3/01)
Absitomen Corporation V. Marie Callender's (David Clark-Higgs, Fletcher & Mack).	Yes (1/01)	No

Kelley Blue Book V. Orion Publishing (Larry Solov-Katten Mucha Zavis).	Yes (7/01)	No
Rezulin V. Pfizer Class Action (Dave Markham-Blumenthal & Markham)	Yes (12/01)	No
Delmonte vs. Dole (Rick McKnight Jones, Day, Reavis and Pogue).	Yes (1/02)	No
State of California V. RJR Tobacco (Laura Kaplan-Assistant District Attorney).	Yes (2/02)	Yes (5/02)
Robert Pravia V. Bank One Camilo Echavaria- Morrison and Foerster).	Yes (4/02)	No
Zoe Littlepage-Littlepage & Booth V. Pfizer	Yes (6/02)	Pending
Sears v. Menards- Michael Best & Friedrich (Kevin Trock)	Yes (8/02)	No
Corbett v. Hayward Dodge (Sharon Kinsey- Consumer Advocates)	Yes (10/02)	No
CPUC v. Cingular Wireless (Jim McTargnahan-Levitt & Weiss)	No	Yes (4/03)
Michael Potts and the AAID Vs. Kathleen Hamilton, et. al Carrie Barkley (DBC)	Yes (11/03)	No
Knauer Vs. Kaiser Permanente Neal Tardiff; (Smith, Tardiff & Hayes)	Yes (11/03)	No
Medavoy v. Allergan and Dr. Klein (Arthur Leeds)	Yes (7/04)	No
Rodeo Cold and Wyoming West v. Coors Brewing Company (John Desisto- Featherstone and Desisto)	Yes (11/04)	No
Severn Et. Al v. Uggs Holdings Sunny Nassim, Fiszer & Loomis	Yes (1/05)	No
Red Bull V. Red Ice (Todd Malynn Feldman-Gale)	Yes (3/06)	No
Grey V. Ford Motor Company	Yes (7/06)	Yes (6/07)
Red Bull V. REDLINE (Henry Kaplan Feldman Gale)	Yes (12/06)	No

Luppen Holdings V. Pitney Bowes (Laura Castner-Zuber & Tailleau)	Yes (8/07)	No
Pinkberry V. KiwiBerri (Marc Fenster- Russ, Kabat & August	Yes (8/07)	No
Weiss V. HP (Steven Berk - Gertler & Chavez)	Yes (8/07)	No
Commonwealth Care Alliance Vs. Astrazeneca Pharmaceuticals Elaine Bsyzewski-Hagens Berman	Yes (1/08)	No
Coneff v. AT&T Gary Soter-Pearson Simon, Soter, Warshaw & Penny	Yes (10/08)	No
Johnson Grossfield v. Equity Marketing (Jamie Broder-Paul Hastings Janofsky & Walker)	Yes (10/08)	Yes(Mediation)
Stevens v. American Equity Investment Life Insurance Company (Craig Simon Berger/Kahn)	Yes (10/10)	Yes (Trial-11/10)
McCleese v. CompuCredit, Columbus Bank and Trust (Steve Martino- Taylor Martino-Zarzaaur,PC)	YES (12/10)	Pending
Kimberly A. Jurun v. Wm. Wrigley Jr. Company (Jason Rudolph - Milstein, Adelman & Kreiger		

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Last Name **required**

Winograd

City / State

New York

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Name/Aliases	Has lived in	DOB	Phone	Address	Avg. Income	Avg. Home Value	Related to
Philip Winograd	Brooklyn, NY Hancock, ME	✓		✓	✓	✓	Abigail D Winograd Francis Lydia Pishny

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Philip Winograd	Bronx, NY	✓		✓	✓	✓	

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Philip Winograd	Mongaup Valley, NY			✓	✓	✓	Arlene Phyllis Winograd

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Philip Winograd	Bronxville, NY			✓	✓	✓	

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